IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

FRIDAY, THE 12TH JANUARY 2007 / 22ND PAUSHA 1928

WP(C).No. 27840 of 2006(L)

PETITIONER:

DR.P. BALACHANDRAN,
ASSISTANT DIRECTOR, NOW WORKING AS
ASSISTANT PROJECT OFFICER, REGIONAL AI CENTRE,
SASTHAMCOTTA, KOLLAM.

BY ADV. SRI.P.C.SASIDHARAN

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY ITS
SECRETARY TO GOVERNMENT, DEPARTMENT OF
ANIMAL HUSBANDRY, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DEPARTMENTAL PROMOTION COMMITTEE
(HIGHER) FOR ANIMAL HUSBANDRY, REPRESENTED BY
ITS CONVENOR, SECRETARY TO GOVERNMENT, ANIMAL
HUSBANDRY DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SHRI. BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K.DENESAN, J.

WP(C)No. 27840 OF 2006

Dated this the 12th January, 2007.

JUDGMENT

The petitioner is borne on the cadre of Assistant Director in the Animal Husbandry Department. On the strength of seniority in the post of Assistant Director, he is eligible to be considered by the Departmental Promotion Committee (Higher) for appointment to the post of Deputy Director in the department. However, in Ext.P2 notification published as per G.O. dated 1.9.2006, the petitioner's name is not included though 20 persons including his juniors find a place in that notification. If the petitioner's name had been included in Ext.P2, his place in the list would have been below serial No:10 and above serial No:11.

2. A statement has been filed on behalf of the respondents. It is contended that the Departmental Promotion Committee (Higher), while preparing the list of officers fit for promotion to the post of Deputy Director, had made discussions about the right of the petitioner for inclusion in the list and after due scrutiny of the files found that disciplinary proceedings were pending against him pursuant to Ext.P4 memo of charges. The petitioner has sought for a declaration that his supersession is

unjust, illegal and against the statutory provisions in K.S & S.S.R. The petitioner has also sought for a declaration that Ext.P4 memo of charges is vitiated by errors apparent on the face of the record and is illegal and unsustainable.

3. Heard both sides. The main contention urged by the petitioner is violation of Note(i) of Rule 28(b)(i)(7) of K.S & S.S.R. It is pointed out that no proceedings, much less, any disciplinary proceedings for the imposition of major penalty were pending against him on the date the Departmental Promotion Committee held its meeting on 14.8.2006. Ext.P4 memo of charges, though dated 21.10.2005, was actually sent to the petitioner only on 16.9.2006. The allegation against the petitioner is that he committed serious irregularities by collecting contribution from outsiders misusing official position. In the statement of allegations it is stated that he in his capacity as President, Indian Veterinary Association had accepted a donation of Rs. one lakh from M/s. Indian Immunologicals Ltd. for shooting a video film on 'Foot and Mouth Disease' and being a government servant the alleged act amounted to violation of the Kerala Government Servants' Conduct Rules, 1960. As on the date of framing Ext.P4 memo of charges neither the disciplinary authority nor any other superior authority had intended or was in a

position to exactly identify that person whose name was referred to therein, as Dr.Balachandran. The statement of allegations which originally opened with the sentence "you, Dr.P.Balanchandran, Veterinary Surgeon etc...." has been subsequently corrected as Dr.P.Balanchandran, Assistant Project Officer etc. It is admitted fact that there was some confusion as to the identity of the person against whom charges were framed as per Ext.P4 and that was why the memo of charge dated 21.10.2005 was forwarded by registered post A/D along with covering letter dated 16.9.2006. This being the fact situation, the petitioner could come to know of the memo of charge only after 16-9-2006. This aspect assumes significance in the context of the statement filed on behalf of the respondents that the members of the Departmental Promotion Committee had discussed the issue in detail in the background of the disciplinary proceedings pending against the petitioner as also the records of the case and after scrutiny of the relevant file had decided not to include the petitioner in the selection list of 2006. Counsel for the petitioner points out that such a consideration was impossible of performance on 14.8.2006, for, even the Government was not in a position to identify who exactly was the delinquent officer. Government could make up its mind as to who exactly is the delinquent

employee, only in the month of September 2006, and therefore, the Departmental Promotion Committee which met in August, 2006 could not have made any deliberation with regard to the alleged misconduct of the petitioner, as matters stood on 14.8.2006. When the Government itself was not in a position to clearly identify who exactly was the delinquent officer, neither the convenor nor the members of the Departmental Promotion Committee could have scrutinised the relevant records on the assumption that the petitioner will be identified on a later date as the delinquent officer and that memo of charges will have to be forwarded to him. In my view that the above submission of the counsel for the petitioner is well founded.

4. Since the petitioner has taken up the contention that the memo of charges is liable to be declared illegal, counsel for the petitioner has referred to certain aspects which, according to him, are relevant for a proper consideration of the above contention. The allegation is that the petitioner received contribution from outsiders for the promotion of the service orgnisation in his capacity as the President of the Indian Veterinary Association. In the statement of allegations the institution which subscribed the donation is mentioned, namely, M/s. Indian Immunologicals Ltd. It is the definite

case of the petitioner as discernible from Ext.P5 written statement of defence as also the pleadings in the writ petition that M/s Indian Immunologicals Ltd. is a wholly owned subsidiary of National Dairy Development Board, Government of India and that they were the producers and suppliers of the FMD vaccine used in Kerala during the period of the disease outbreak. He has stated that he assumed charge of the office of the President of the service organisation on 1.7.2000 whereas the decision to receive donation from the above Central Government Institution had been taken by the service organisation as early as on 13.12.1999. On that day, the petitioner was neither the President of the organisation nor its office bearer. The resolution passed by the organisation was communicated by the then office bearers to M/s.Indian Immunologicals Ltd. and subsequently, pursuant to the decision taken on 17.1.2000, a contribution of Rs.one lakh was paid to the service organisation by deamand draft in favour of the Treasurer of the orgnisation. This fact is evident from Ext.P6 letter dated 7.1.2000 addressed by Indian Immunologicals to Dr.N.R.Harshakumar who was the Treasurer of the organisation. Counsel submits that inspite of the fact that this vital information was brought to the notice of the Government through the written

statement of defence filed by the petitioner, disciplinary proceedings have been initiated against the petitioner singling him out or isolating him for a hostile treatment with ulterior motives. No action has been taken against any other office bearer including the then President or the Treasurer in whose name demand draft was sent by Indian Immunologicals. This attitude of the respondents is proof of the lack of bonafides on their part. It has been brought to the notice to the Government through Ext.P5 that the organisation had taken up a public cause and decided to render service to prevent the spread of fatal diseases afflicting the cattle population and that taking into account the good intentions behind the action of the organisation, the exhibition of the video was permitted at Soorya Film Festival on 16.10.2000 at VJT hall, Thiruvananthapuram and the documentary was formally released by none other than the then Minister for Animal Husbandry. Dr.G.Sudevan who was the then Director of the Animal Husbandry offered felicitations at the release of the documentary. Dr.K.Udayavarman and Dr. K.Viayakumar; the latter being the Director of the Animal Husbandry as on the date the petitioner had filed Ext.P5, took active role as narrator and presenter in the video documentary. It is therefore contended that taking action in isolation against

the petitioner on the ground that he happened to be the President of the Association on a subsequent date and serving charge memo on him incorrectly stating that he had received contribution and that too from a private institution, are per se arbitrary and without proper application of mind. It is contended that the impugned action was taken and without ascertaining the true facts but actuated by malafides and at the instance of persons who wanted to see that the petitioner is superseded in the matter of promotion.

5. It may not be necessary for this Court at this stage to go deeper into the factual matrix to find out the truth or otherwise of the allegations. At the same time, it cannot but be said that, prima facie, there exists genuine cause for the petitioner to feel aggrieved against the framing of charges against him and the supersession. Even assuming that the charge framed against the petitioner is for the imposition of a major penalty, that by itself cannot be a legally sustainable ground not to assess the fitness of the petitioner for inclusion in Ext.P2 select list. No officer shall be excluded from consideration merely on the ground of the pendency of disciplinary proceedings. That this is the statutory position is discernible from Note (i) of Rule 28(b)(i)(7) of K.S &

S.S.R. The legal requirement is to examine the records referred to in the above rule for the specified period with a view to assess the performance of the officer and to make a decision regarding his fitness to be included in the select list. The rule does not permit the Departmental Promotion Committee to simply discard the right of an officer, who comes within the field of choice, to get his fitness for inclusion in the list assessed by the Departmental Promotion Committee which is bound to take appropriate decision about his fitness to be selected for the post for the relevant period. The rule says that the suitability of the officer for promotion should be assessed by the Departmental Promotion Committee and a finding reached, had the officer been not suspended or the criminal proceedings/departmental proceedings had not been pending against him, he would have been recommended/selected for promotion. The rule further says that where a select list is prepared the Departmental Promotion Committee shall also make a finding as to what the position of the officer in that list would have been but for the suspension or the criminal proceedings/departmental proceedings against him. Officers against whom vigilance or departmental proceedings are taken after the charges have, prima facie, been established in a preliminary enquiry should not be included

in the Select List. But, the case of such officers should also be assessed. It is therefore evident that the Departmental Promotion Committee was not justified in postponing the consideration of the case of the petitioner to assess his fitness to be included in the select list when it met on 14.8.2006. Apart from the rule position, I am of the opinion that the reasons stated by the respondents for not considering the case of the petitioner on 14.8.2006, is not at all convincing. As already found, it was not clear as matters stood on 14.8.2006 whether any disciplinary proceedings were pending against the petitioner because Government itself was in a position to identify who the delinquent officer was, only in September 2006. When the disciplinary authority itself had not made up its mind as to who was the delinquent officer, it is difficult to believe that the Departmental Promotion Committee was able to take a decision to supersede the petitioner on the basis of pending departmental or disciplinary proceedings against him.

6. In the result I am inclined to dispose of the writ petition with the following findings, observations and directions:-

i) The decision of the Departmental Promotion Committee to supersede the petitioner in its meeting held on

14.8.2006, is illegal. It is so declared.

ii) The Departmental Promotion Committee ought to have considered and decided the case of the petitioner with reference to the facts and materials available on 14.8.2006, either to include him in the select list or not to include him in the select list.

iii) Ext.P3 review petition filed by the petitioner shall be considered in the light of the above declaration and necessary follow up action taken to convene an ad hoc meeting of the Departmental Promotion Committee as expeditiously as possible. The meeting of the Departmental Promotion Committee shall, at any rate, be convened within two months from today.

iv) Ext.P5 explanation submitted by the petitioner shall be considered by the Government by proper application of mind and with a view to ascertain whether the facts stated therein are correct and if those facts are correct what further proceedings shall be taken in the disciplinary proceedings. This exercise shall be completed within six weeks from the date of receipt of a copy of the judgment.

v) Proceedings initiated as per Ext.P4 shall be expedited and completed within the shortest possible time. Ordered accordingly.

K.K.DENESAN
Judge

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